HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. V. SEETHAPATHY

Writ Petition No.6491 of 2006

Between:

Mohammad Shafi

... Petitioner

And

The Andhra Pradesh Pollution Control Board
Represented by its Member Secretary,
Sanathnagar, Hyderabad and others.

... Respondents

:: ORDER::

Counsel for the Petitioner: Sri C. Mastan Naidu

Counsel for Respondents 1 to 3: Sri S.V. Bhatt

Counsel for Respondents4 and 5: Government Pleader for Revenue

Counsel for Respondent No.6: Government Pleader for Panchayat Raj

Counsel for Respondent No.7: None.

July 04, 2006

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Per G.S. Singhvi, CJ

In this petition, the petitioner has prayed for issue of a direction to the Andhra Pradesh Pollution Control Board (for short 'the Board'), its functionaries and the district authorities to shift Decordicator and Oil Mill of respondent No.7 from the residential locality of Rangadasu Street, Kollapur Mandal, Mahabubnagar District.

The petitioner claims to be a resident of Rangadasu Street. He is said to have represented to the Board and its functionaries as also the district authorities to shift M/s.Venkateswara Oil Rotary (Decordicator and Oil Mill) being run by respondent No.7 by alleging that the same is causing air and sound pollution. His grievance is that the respondents have not taken steps to close the mill despite the fact that the noise caused due to running of the mill is far more than the standard prescribed under the Noise Pollution (Regulation and Control) Rules, 2000. In the affidavit filed by him, the petitioner had averred that by an order dated 10-8-2004, Joint Chief Environmental Engineer of the Board had issued direction for shifting of the mill, but the same was set aside by the Appellate Authority vide its order dated 13-10-2004 on the technical ground of violation of the rules of natural justice and so far the competent authority has not passed fresh order.

In the reply affidavit filed by Sri Rajeshwar Tiwari, Secretary of the Board, it has been averred that M/s.Venkateswara Oil Rotary (Decordicator and Oil Mill) belonging to 7th respondent is located in H.No.2-18-80, Rangadasu Street, Kollapur, Mahabubnagar District. The unit is having groundnut decordicator with a capacity of 50 kg. per hour and oil expeller with a capacity of 20 kg. per hour.

According to Sri Tiwari, the unit comes under non-polluting SSI category and is required to obtain acknowledgment from District Industries Centre, which is considered as consent of the Board. It has been further averred that after setting aside of order dated 16-8-2004 passed by Chief Environmental Engineer, officers of the Board inspected the unit on 18-1-2005 and again on 15-4-2006, but the same was found closed. For the sake of convenient reference, paragraph 3 of the affidavit of Sri Rajeshwar Tiwari is reproduced below:

> "3. I further respectfully submit that after the order of the Appellate Authority, the officials of A.P.P.C.B, Regional Office, Hyderabad inspected the unit on 18-1-2005 and observed that the unit was not in operation and could not conduct noise monitoring. I crave leave of this Hon'ble Court to peruse the Report dated 2-2-2005 (R-1/1) as part of this Counter Affidavit for all purposes. One Mr.Md.Khaleel S/o.Khaja Miya, H.No.2-18-80, Rangadasu Street, Kollapur (V & M), Mahaboobnagar District also filed W.P.No.9354 of 2006 requesting to take appropriate action on air pollution from this Unit. Further, this Hon'ble Court in its order dated 28-4-2006 (received by the Board on 26-5-2006) in W.P.No.9354 of 2006 directed the petitioner to make a representation before the Board with a direction to the Board to dispose off the same after getting a report on alleged pollution caused by operation of the above unit. The representation of Md.Khallel, petitioner in W.P.No.9354 of 2006 was received in the Zonal Office on 12-6-2006. I crave leave of this Hon'ble Court to peruse the Representation of Mr.Md. Khaleel (petitioner in W.P.No.9354 of 2006) (R-1/2) as part of this Counter-Affidavit for all purposes. I further submit that the officials from Regional Office, Hyderabad again inspected the industry on 15-4-2006 and observed that the machine was sent for repairs / maintenance and hence, noise monitoring could not be carried out. I crave leave of this Hon'ble Court to peruse the Report dated 17-4-2006 (R-1/3) as part of this Counter-Affidavit for all

purposes. The Board officials will carry out monitoring as and when the decorticating unit is in operation and will initiate appropriate action based on the monitoring results as directed by this Hon'ble Court in W.P.No.9354 of 2006. I once again tender unconditional apology for omissions and commissions and inconvenience caused to this Hon'ble Court."

In his counter-affidavit, respondent No.7 has averred that oil mill along with decordicator was started in 1989 with 7.5 HP and 20 HP oil mill and 15 HP roater after taking permission from Gram Panchayat, Kollapur. At that time, there was no classification of the locality, such as residential, industrial etc. and that is why the Gram Panchayat permitted many oil and rice mills with high capacity motors. In paragraph 2 of his affidavit, respondent No.7 has mentioned the names of Sri Lakshmi Venkateswara Oil Mill, Sri Swamy Ayyappa Oil Mill & Decordicator, Sai Ram Binni Rice Mill, Sri Vasavi Modern Rice Mill, Vasavi Oil Mill, Sri Rani Saheb Surabhi Rice Mill, and Venkateswara Rice Mill, which were set up after obtaining permission from the Gram Panchayat. He has further averred that the capacity of these mills is much more than his own unit. He also averred that his unit is closed due to financial trouble and, as and when it is started, there will be no noise pollution. He has then averred that the unit is situated at a distance of 130 ft. from the house of the petitioner. Still further, respondent No.7 has averred that the petitioner and his brother erected saw mill on his land. Earlier also they tried to interfere with the land necessitating filing of O.S.No.76 of 2004 by his father. In that case, injunction order dated 8-2-2004 was passed by the Junior Civil Judge, Kollapur. Along with his affidavit, the petitioner has filed copy of injunction order passed by the Court of Junior Civil Judge, Kollapur, Mahabubnagar in I.A.No.65 of 2004 (O.S.No.76 of 2004 – B. Nagisetty v. G. Laxminarayana and

others) to show that petitioner is defendant No.4 in the suit filed by his father. He also filed photographs to show the location of the petitioner's house and the mill. For the sake of convenient reference, paragraphs 5 and 6 of the affidavit of respondent No.7 – B. Mallikarjuna @ Mallaiah are reproduced below:

> "5. With regard to the allegations in paras 5, 6 and 7 are concerned, I humbly submit that as against the earlier dt.10-8-2004 shifting the unit, I have preferred appeal to the Appellate Authority and the appellate authority allowed my appeal vide order dt.13-10-2004. I humbly submit that because of this litigation, I become sick and financially in trouble. Therefore, from January, 2005, I am not operating the mill. I submit that in April 2006, I opened my mill for the purpose of repairing the decordicator. Then, the PCB officials inspected the premises. I also submit that since the season is approaching, I want to open my mill. Insofar as the motors relating oil mill is concerned, it crushes the seed resulting in the producing the oil mill (with filter). Which has very minute noise, and so also with the roater (with filter) with 15 HP. I humbly submit that the allegations as to the causing pollution is absolutely baseless, as there is no scope for causing any pollution, in case of the petitioner and his brother i.e. Md.Khaleel. I humbly that in pursuance of the inspection of the P.C.B. Authorities, the 3rd respondent has informed me, since I am also called as Mallikarjuna @ Mallaiah, vide Lr.dt.20-4-2006 to apply for consent for operation. Accordingly, I have applied for the same by paying Rs.100/- towards the costs of the application. The same is pending with them as on today.
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> 6. I humbly submit, the person by name Abdul Rasheed in OS No.76 of 2004 is none other than the brother of the petitioner herein. It is also submitted that Md. Khaleel who is the petitioner in W.P.No.9354 of 2006 is 4th defendant in the said suit. These persons on different occasions acting differently, misleading the courts as well as the authorities so as to make me suffer. I humbly submit that I am not operating the mill in obedience of the orders of this Hon'ble Court on 13-6-2006. I

submit that this is livelihood business to me and without which myself and my family will be on the roads. I humbly state that I am law abiding citizen and I will follow the conditions stipulated by the authorities as per law."

We have heard learned counsel for the parties and perused the record including reports dated 17-4-2006, 28-6-2006 and 30-6-2006 prepared by the Environmental Engineer, copies of which have been produced by the learned counsel for the Board.

In our opinion, the petitioner is not entitled to any relief under Article 226 of the Constitution of India because he has conveniently withheld facts relating to litigation instituted by the father of respondent No.7 in the Court of Junior Civil Judge, Kollapur in which he himself is a defendant. He has also conveniently omitted to make a mention of large number of similar industries being operated in village Kollapur. This appears to have been done by the petitioner to avoid scrutiny of his claim in a correct perspective. It also appears that the petitioner has filed this petition as a counter to the litigation instituted by the father of respondent No.7. Therefore, we do not find any justification to entertain his prayer for issue of a writ of mandamus directing the official respondents to close the industry of respondent No.7 or require him to shift the industry from the present location.

With the above observations the writ petition is dismissed.

Notwithstanding the above, we deem it appropriate to take cognizance of the averments contained in the affidavit of Sri Rajeshwar Tiwari, which are supported by the inspection reports submitted by Environmental Engineer. These reports are evidence of the conscious efforts made by the officers of the Board to prevent any possibility of pollution being caused by the industry of respondent

No.7. We hope that as soon as respondent No.7 starts his industry, concerned officers of the Board will inspect the same and take appropriate action in accordance with law to stop all types of pollution.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

July 04, 2006

svs